

with the quality of the services received and felt strongly that the rates negotiated for contractor services were unbeatable. Those opinions were reinforced by a limited market research that often times was no more extensive than placing phone calls to area businesses, inquiring about availability of resources and requesting quotes. The possibility that better deals were obtainable from other providers of GWACs was never a consideration.

A few offices chose to acquire contractor services directly, awarding contracts to predominantly small businesses. Their choices were made after soliciting best offers from those businesses and comparing same with what GSA had in place for that locale. The accompanying documentation supported their decisions, as the majority of the rates bettered what GSA had negotiated for the same/similar skills, sometimes by amounts exceeding \$10.00/hr. It also served to refute any unqualified claims made by GSA-serviced offices about the futility of market research.

The individuals involved in making the above decisions weren't completely without fault, however. They were queried about researching the GWAC market outside of GSA. They had not done so, owing to either concerns over the restrictions imposed by the Economy Act or ignorance of the GWAC market. Concerns over the Economy Act dealt specifically with the review and approval requirements (i.e., approval at a level no lower than a SES/General Officer). A strict reading of the AFARS would necessitate the forwarding of all district command "determinations and findings" to the major subordinate command for approval. Many viewed that stipulation as a disincentive to look to other agencies.

The number of agencies involved in Multi agency contracts has grown considerably in recent years. GSA freely admits that it receives stiff competition from agencies such as the Department of Transportation (the Information Technology Omnibus Procurement), the National Institute of

Health (the Chief Information Officer Solutions and Partners contract) and the Defense Information Systems Agency (the Defense Enterprise Integration Services - 11 contract). Further information on those GWACs available for use by all Federal agencies can be obtained by visiting the Defense Information Systems Agency website at <http://www.disa.mil/D7>.

### ***TRAIL INSIGHTS IN CORPS CONTRACTING***

**Trial Attorney's Note: This case illustrates the relationship between the VEO clause and the Differing Site Condition clause. Notwithstanding the VEO clause, Contractor entitled to unit price increase for overrun work under the Differing Site Condition clause where the quantity of work differed materially from the estimate in the contract.**

Appeal of Met-Pro Corp., Under Contract No. DACA38-92-C-0044, ASBCA No. 49694 (Vicksburg District)

The District awarded the subject contract to Met-Pro for the removal and clean-up of petroleum storage tanks at the former Greenville Air Force Base, Mississippi. The contract contained three line items: CLIN 1 was for removal of the tanks, CLIN 2 was for excavation and disposal of petroleum contaminated soil, and CLIN 3 required the excavation and removal of hazardous contaminated soil at the site. The District considered excavation of petroleum contaminated soil under CLIN 2 as incidental to tank removal under CLIN 1. The District estimated 150 cubic yards (CY) for sub line item 2A, and 250 CY sub line item 2B (for excavation and disposal exceeding sub line item 2A). Met-Pro bid \$40/CY for both sub line items. The IFB contained boring logs which showed that the petroleum contamination in the soil was low enough to allow the soil to be used as backfill. The contract also contained the Variations In Estimated

Quantities (VEQ) and VEQ-Subdivided Items (VEQ-SI) clauses. During performance, Met-Pro excavated 3832.5 CY of petroleum contaminated soil under CLIN 2. The district paid Met-Pro \$40/CY for the overrun quantities and granted Met-Pro a 94.54 day time extension. Met-Pro submitted a \$678,689.77 claim to the CO based on variations in estimated quantities (VEQ) and differing site conditions. The claim included a costs of \$101.46/CY for sub line item 2B chiefly based on the unforeseen need to purchase and transport clean backfill to the site.

The Board (Judge James) sustained Met-Pro's appeal. The Corps took the position that Met-Pro was barred by the VEQ-SI clause from increasing its unit price for sub line item 2B. Met-Pro argued it was permitted such an increase because the overrun experienced was a differing site condition. The Board held that the overrun was caused by a type I differing site condition. The Board found that the Corps expected 400 CY of material to be removed under CLIN 2 and that Met-Pro relied on this estimate in preparing its bid. The Board then found that neither the VEQ nor the VEQ-SI clauses barred Met-Pro from receiving increased unit costs for excavation under the differing site condition clause. Therefore, the Board sustained the appeal.

### ***UPCOMING PARC TALKS***

**16 June 1998** Hazardous Waste Action Coalition (HWAC) Business Conference, Baltimore Inner Harbor, Panel on Performance-Based Contracting, 1045-1215 hours

**18 June 1998** Corps of Engineers Commanders Course - Washington Week, 1998, Panel Discussion coordinator, 1530-1645.

**6-10 July 1998** Project delivery Team Conference - Baltimore, Maryland

**20 August 1998** Annual Meeting of the Associated General Contractors of America (AGC)

and HQUSACE, Washington, DC 0800-1500 hours.

**26-27 August 1998** Army Roadshow - Dallas, Texas

### ***IMPORTANT NOTES***

**CENTRAL CONTRACTOR REGISTRATION (CCR):** It now appears as though the March 31, 1998 date by which contractors must be registered in the CCR database will be extended. The new date is May 31, 1998.

**DEFENSE ACQUISITION CIRCULAR (DAC 91-13):** The long-awaited DAC 91-13 was published in the Federal Register (Vol. 63, No. 45) Monday, March 9, 1998. It should be posted on the OSD web page within the next few days.